

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2285 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J I MEHTA

Versus

GUJARAT PANCHAYAT SERVICE SELECTION BOARD

Appearance:

MR VH DESAI for Petitioners - Absent

SERVED for Respondent No. 1

MR SV PARMAR for Respondent No. 3 - Absent

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/10/96

ORAL JUDGEMENT

This is a petition under Article 226 and 227 of the Constitution of India, seeking a writ of mandamus or any other appropriate writ, or direction, directing the first respondent to amend their advertisement and to give call for interview to all the petitioners and the respondent No. 2 to come out with a declaration that

degrees of B.A.M.S. and B.S.A.M. are same, similar and equivalent and that all the candidates who are having the said degree are entitled to the posts of Medical Officer Class III.

2. It appears that advertisements No. 25 to 29 - 84 - 85 came to be published, vide Annexure 'B', inviting applications on or before 20th December 1984 for Medical Officer Class III at Sl. No.27. As per the said advertisement, candidates who were holding degrees mentioned therein were held eligible i.e. candidates possessing degree of (1). L.C.P.S., (2). L.M.P., (3). D.A.S.F. (4). B.A.M.S., or (5). G.F.A.M. So far as one Ajitkumar Natwarlal, petitioner No. 2, is concerned, he has annexed at Annexure 'C' a copy of a certificate in degree in Bachelor of Ayurved in Medicine & Surgery (B.S.A.M) having been conferred on him in October 1978 at Jamnagar. Vide Annexure 'D', certificate of registration in the name of Ajitkumar Natwarlal, issued by the Gujarat Board of Ayurved & Unani System of Medicine, dated 29.2.1980 has been produced. The petitioners, with a view to canvass their submission that the degree of B.S.A.M., which they are holding, is similar to that of B.A.M.S., have annexed at Annexure 'E' an advertisement issued by Union Territory of Dadra and Nagar Haveli on 20th August 1984 wherein for the post of Assistant Medical Officers, applications were invited from the persons possessing qualification of D.A.F.S., G.A.F.M., B.A.M.S or B.S.A.M.

3. The petitioners have contended that curriculum and syllabus for B.A.M.S. as published by Gujarat Ayurved University shows that the course is known as Ayurvedacharya (B.A.M.S. Course) and that degree of B.A.M.S. is given after successful study. It is further contended that certificate of registration mention the above qualification of the petitioners and qualification shown is Auyrvedacharya B.A.M.S. and as the Board is aware that Gujarat Ayurved University gives a degree of Ayurvedacharya, only English version is changed from B.A.M.S. to B.S.A.M. It is further contended that merely because the English version is changed and B.S.A.M. is not mentioned in the advertisement, the petitioners cannot be deprived of their right to be considered by the Appropriate Authority.

4. On behalf of the respondent Gujarat Panchayat Service Selection Board, its Secretary has filed an affidavit indicating that the degree of B.S.A.M. has not been included in the requisite qualification for the post in question and as all the petitioners possess degree of

B.S.A.M., they are not eligible for the post in question. Thus, the respondent has submitted that the respondent is justified in not accepting the applications of the petitioners. It is further contended by the said respondent that the degree B.S.A.M. conferred by the Gujarat Ayurved University is equivalent to the degree of B.A.M.S. or not cannot be decided by the Board in the absence of the University. The Board cannot take a decision that both the degrees are similar or equivalent and the petitioners, after this affidavit in reply, have not chosen to join Gujarat Ayurved University as party respondent. The respondent has annexed with the affidavit in reply extract of the rules of Gujarat Panchayat Service (Classification & Recruitment) Rules, 1967. It shows that so far as Medical Officer Class III is concerned, the qualification prescribed is L.C.P.S., R.M.P.D.A.S.F., B.A.M.S. or G.F.A.M.. It appears from the affidavit in reply that it is not open for the respondent No. 1 to make any changes in this Rules.

5. Earlier, on 1.8.1996, when this matter was called out for hearing before the Court (Coram: S.A. Pandit., J.) on 1.8.96, nobody remained present on behalf of the petitioner. However, in the interest of justice, the Court adjourned the matter to 6.8.96. Even today, learned Advocate for the petitioner has not chosen to appear before the Court though the matters have been notified on 16th October 1996 in the provisional Board and is placed before this Court today. In the first session, this Court waited for the learned Advocate but in the second session, as the learned Advocate did not appear, this Court thought it fit to proceed with the matter. This petition being under Article 226 and 227 of the Constitution of India, once the matter is notified before the Court, it becomes the duty of the person concerned to remain present before the Court for hearing and it cannot be said that the Court must wait for an indefinite time.

6. Looking to the affidavit in reply, it is clear that on account of the Gujarat Panchayat (Classification and Recruitment) Rules 1967, only persons possessing requisite qualification can apply for the post, and not otherwise. The petitioners have not challenged the rules. So far as this Rules are in operation, it cannot be said that the decision taken by the respondent No. 1 is not in accordance with law. This Court is not, in a petition, to declare that B.S.A.M. and B.A.M.S. degrees are equivalent in the absence of University, its opinion and other relevant material. It is for the University, which is an expert body, to consider this question. No

relief is prayed against the University. So far as the advertisement is concerned, it goes without saying that as per the Rules, applications from eligible candidates are invited. The respondent No. 1 Selection Board cannot proceed contrary to the Rules framed. Under the circumstances, this petition requires to be rejected, and is hereby rejected.

Rule is discharged. No order as to costs.
Ad-interim relief stands vacated.

csm./